

Before the
Federal Communications Commission
Washington, D.C. 20554

Dec 20 3 11 PM '04

In the Matter of)

) Amendment of Section 73.202(b),
) Table of Allotments,
) FM Broadcast Stations.
) (Cannelton and Tell City, Indiana)) MB Docket No. 04-436
) RM-11112
)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 15, 2004

Released: December 20, 2004

Comment Date: February 10, 2005

Reply Comment Date: February 25, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Hancock Communications, Inc. ("Petitioner"), licensee of Station WLME(FM) ("WLME"), Channel 275C3, Cannelton, Indiana, and Station WTCJ-FM, Channel 289A, Tell City, Indiana. Petitioner seeks to amend the FM Table of Allotments by reallocating Channel 275C3, from Cannelton to Tell City, and modifying the license of Station WLME accordingly. Since this proposal would remove the sole local aural transmission service from Cannelton, Indiana, Petitioner proposes the reallocation of Channel 289A from Tell City to Cannelton and the modification of Station WTCJ-FM's license accordingly. Petitioner observes that the proposed reallocations are mutually exclusive with the existing licensed facilities, as required by Section 1.420(i) of the Commission's rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹ Further, Petitioner states that if Channels 275C3 and 289A are reallocated as proposed, Petitioner will file applications for the reallocated channels, will modify the facilities of the stations promptly, and commence operation of the reallocated channels at Tell City and Cannelton.

2. Petitioner asserts that the adoption of its proposal will result in a preferential arrangement of FM allotments consistent with the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.² The Station WLME move from Cannelton to Tell City would result in a net gain in service to 35,450 persons. The Station WTCJ-FM move from Tell City to Cannelton would result in a net gain in service to 14,400 persons. Both the gain and loss areas involved in the station moves are well served with five or more radio broadcast stations. Thus, grant of Petitioner's proposal will result in net service gains, which would result in a preferential arrangement of allotments. Because Petitioner's proposal is consistent with the provisions of Section 1.420(i) of the Commission's rules, we shall not accept competing expressions of interest in the use of Channel 275C3 at Tell City or Channel 289A at Cannelton, Indiana.

¹ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

² 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

3. This proposal complies with the Commission's technical rules and warrants consideration because it could provide a net gain in population served by the two stations. Consistent with the technical requirements of the Commission's rules, Channel 289A, Station WTCJ-FM, can be allotted to Cannelton, Indiana, utilizing coordinates of 37-48-13 NL and 86-48-57 WL, with a site restriction of 13.5 kilometers (8.4 miles) southwest of Cannelton. As a result of the reallocation of Channel 289A to Cannelton, Station WTCJ-FM, will now provide a 70 dBu signal to 72 percent of the Owensboro, Kentucky Urbanized Area. Accordingly, Petitioner must provide a *Tuck* showing that Cannelton is independent of the Owensboro, Kentucky Urbanized Area.³ Channel 275C3 can be allotted to Tell City utilizing coordinates of 37-50-52 NL and 86-36-18 WL, with a site restriction of 18.4 kilometers (11.4 miles) southeast of Tell City.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, 47 C.F.R. Section 202(b), with respect to the communities listed below, as follows:

<u>Channel Nos.</u>		
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Cannelton, Indiana	275C3	289A
Tell City, Indiana	289A	275C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

6. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before February 10, 2005, and reply comments on or before February 25, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554.

³ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988); see also *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) (a reallocation proposal requires a showing pursuant to *Faye and Richard Tuck* when the proposed 70 dBu contour will encompass more than 50 percent of an Urbanized Area.)

Additionally, a copy of such comments should be served on Petitioner's counsel, as follows:

John F. Garziglia, Esq.
Howard J. Barr, Esq.
Womble Carlyle Sandridge & Rice, PLLC
1401 Eye Street, N.W.
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7. Parties must file an original and four paper copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁴ This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

9. For further information concerning this proceeding, contact R. Barthen Gorman, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement.

⁴ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

Any comment, which has not been served on the petitioner, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (*see* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c)). Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.